

*Office Memorandum* • UNITED STATES GOVERNMENT

OGC Has Reviewed

TO : Lawrence R. Houston

DATE: 4 February 1953

25X1A9A FROM :

SUBJECT: Legal Effect of Senate Resolution 19, 83rd Congress

1. You have requested my opinion as to the legal effect of Senate Resolution 19 of the 83rd Congress, passed by the Senate on January 9, 1953, a copy of which is attached. Senate Resolution 19 is not a joint resolution and there is no present indication that it will be forwarded to the House for concurrent action.

2. The United States Constitution, Article 1 Section 7 Clause 3, provides:

"Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a Question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

3. The words "before the Same shall take Effect," are determinative of this present discussion. A long succession of opinions by Attorneys General has relied upon their plain meaning in advising heads of executive departments that separate resolutions of either House of Congress, save in parliamentary matters within their exclusive jurisdiction, have no legal effect to constrain the action of the President or the heads of departments. Accordingly, Senate Resolution 19 cannot be said to have compulsive legal effect upon any agency that refuses to divulge the information requested. This, of course, does not purport to assess the political implications of any such refusal.

4. By contrast, a joint or concurrent resolution passed by both Houses in the manner provided by the Constitution, when approved by the President, has all the characteristics and effects of a statute. U. S. v. Stockslager, 127 U.S. 470, 9 S.Ct. 382. See also Watts v. U. S., 161 F. 2d 511 (5th Cir., 1947), cert. denied 68 S. Ct. 81. If a Joint Resolution of both Houses, in tenor similar to Senate Resolution 19, should be approved by the President in the manner provided by Section 7, Clause 3 of Article 1 of the Constitution, it would necessarily present a more complicated question of statutory construction in determining its effect,

in the light of the specific exemption granted this Agency in Section 7 of Public Law 110 (81st Congress) from requirements of reporting personnel information. In such event it would be necessary to weigh contrasting generality and specificity and to consider all other factors determinative of Congressional intent. Such considerations are not here involved.

5. The most notable discussion of the legal effect of congressional resolutions occurs in an early opinion of Attorney General Cushing, reported in 6 Op. Atty. Gen. 680 (1854). Mr. Cushing said:

"In a word, the authority of each Head of Department is a parcel of the executive power of the President. To coerce the Head of Departments is to coerce the President. This can be accomplished in no other way than by a law, constitutional in its nature, enacted in accordance with the forms of the Constitution.

Of course, no separate resolution of either House can coerce a Head of Department, unless in some particular in which a law, duly enacted, has subjected him to the direct action of each; and in such case it is to be intended, that, by approving the law, the President has consented to the exercise of such coerciveness on the part of either House." 6 Op. Atty. Gen. 680, 682.

"...The Constitution has not given to either branch of the Legislature the power, by separate resolution of its own, to construe, judicially, a general law, or to apply it executively to a given case. And its resolutions have obligatory force only so far as regards itself or things dependent on its own separate constitutional power." 6 Op. Atty. Gen. 680, 684.

"(The) legal intendent of a statute cannot be authoritatively changed by a separate resolution of either or of both Houses; but only by a new act of Congress." 6 Op. Atty. Gen. 680-685.

6. Subsequent judicial discussions and opinions of Attorneys General have relied upon the authority of Mr. Cushing's early opinion. I have set forth below certain quotations pertinent to this present discussion.

a. Mr. Justice Brown concurring in Fourteen Diamond Rings, Emil J. Pepke, Claimant v. U. S., 183 U.S. 176 (1901), said at page 184:

"The Resolution in question was introduced as a joint resolution, but it never received the assent of the House of Representatives or the signature of the President. While a joint resolution, when approved by the President, or being disapproved, is passed by two thirds of each House, has the effect of a law, (Const. Art. 1, Sec. 7,) no such effect can be given to a resolution of either house acting independently of the other. Indeed, the above clause expressly requires concurrent action upon a resolution "before the same shall take effect."

This question was considered by Mr. Attorney General Cushing in his opinion in certain Resolution of Congress, 6 Op. Atty. Gen. 680, in which he held that while joint resolution of Congress are not distinguishable from bills, and have the effect of law, separate resolutions of either house of Congress, except in matters pertaining to their own parliamentary rights, have no legal effect to constrain the action of the President or the Heads of Departments. The whole subject is there elaborately discussed."

b. The opinion of the Court of Appeals for the 9th Circuit in the case of Wells v. U. S., 257 Fed. 605 (9th Cir., 1919), stated in part on page 619:

"While not passing upon the question directly, the Supreme Court has considered and treated joint resolutions as having the effect of law. For instance, the court, in considering a joint resolution suspending the operation of an act of Congress, says in U. S. ex rel. Levey v. Sotckslager, 129 U. S. 470, 475, 9 Sup. Ct. 382, 384:

'It (the joint resolution) has all the characteristics and effects of the act of March 7, 1867 (the act which the resolution suspended), which became a law by the approval of the President. Until Congress should further order, the operation of the act of March 7, 1867 was by the joint resolution effectually suspended.'

c. In 29 Op. Atty. Gen. 555, 560, there appears the following:

"At the outset it should be remarked that the paragraph of the House resolution undertaking to direct the Comptroller, the Secretary of the Treasury, and other executive officers to comply with all directives of the committee for assistance in its labors, has no legal

effect. (6 Op. Atty. Gen. 680). The duties of the Comptroller are imposed by law and cannot be lessened or increased by resolution of one House."

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Attachment

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